

Invitation to Comment: Whether the CMA should launch certain reviews of market and/or merger remedies

30 January 2023

Introduction and purpose of this Invitation to Comment

1. The Competition and Markets Authority (CMA) has a statutory duty¹ to keep under review undertakings and orders (referred to collectively in this document as remedies) accepted or imposed respectively under the Enterprise Act 2002 (EA02) as part of its markets and mergers work. As part of this, the CMA will from time to time, on its own initiative, consider whether there are any remedies in its portfolio that appear to be no longer appropriate due to a possible change in circumstances.
2. Relevant changes in circumstances may include, for example:
 - (a) Where there have been changes to the market or sector such that competition in the market has changed;
 - (b) where one or more of the businesses involved in the original transaction are no longer involved in the same market(s); or
 - (c) where changes to the regulatory structure or legislation have been implemented.
3. In such cases the CMA will consider whether a review of those remedies should be carried out to establish whether they remain appropriate.
4. Annex One to this document lists specific remedies for which our initial screening has identified a possible change in circumstances indicating that a review of that remedy may be appropriate. This Invitation to Comment (ITC) is seeking views and evidence that indicates whether any of our remedies, and specifically those listed in Annex One, should be reviewed.
5. In parallel with this ITC, the CMA has also today published a separate ITC on whether to launch a review of the undertakings given by British Sky

¹ Under sections 92 and 162 of the Enterprise Act 2002.

Broadcasting to the Secretary of State for Trade and Industry in 2001, concerning its acquisition of British Interactive Broadcasting.

Remedies identified for potential review

6. As noted above, the CMA's initial screening has identified 10 remedies where the CMA has identified that there is at least one possible change in circumstance indicating that a review of that remedy may be appropriate. Details of those remedies are set out in Annexe One.

Other review candidates in the CMA's portfolio

7. The CMA is aware that stakeholders, including parties, third parties and other organisations will have knowledge of different areas relevant to the sectors covered by the CMA's remedies. For this reason, in addition to consulting on the 10 remedies listed in Annex One, the CMA is also seeking views on whether there are other remedies across the CMA's portfolio of market and merger remedies where stakeholders consider there to have been relevant changes in circumstance indicating that a review of that remedy may be appropriate.
8. The CMA's markets remedies can be found on the CMA's [Markets and monopolies register of orders, undertakings and directions](#). The CMA's merger remedies can be found on its separate [Mergers orders and undertakings register](#).

Jurisdiction

9. The CMA has a statutory duty under sections 92 and 162 of the EA02 to keep under review remedies under the EA02. Specifically, from time to time, the CMA must consider whether, by reason of any change in circumstance:
 - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
 - (b) an order is no longer appropriate and needs to be varied or revoked.
10. CMA Guidance document CMA11, [Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders](#) provides that the CMA will typically issue an Invitation to Comment in circumstances where it is intending to conduct a

review of any remedies seeking views on whether such a review should take place.²

Responding to this Invitation to Comment

11. The CMA welcomes comments on each of the remedies listed in Annex One, as well as comments concerning any of the CMA's other market and merger remedies. We would particularly welcome responses from relevant stakeholders including the parties and third parties to the original transactions in relation to which a remedy was accepted or imposed, as well as advisers and other stakeholders with industry-specific expertise relevant to these remedies.
12. In addition to identifying relevant changes in circumstance, the CMA would welcome any comments on why a review of any remedy should be prioritised in accordance with the [CMA's published Prioritisation Principles](#).
13. Responses should be received by 5pm on **Friday 17 February 2023** and should be sent in writing to: remedies.reviews@cma.gov.uk (Subject line: Remedies Reviews 2023).
14. Following the end of the consultation period, the CMA will consider all responses, received together with its own analysis before reaching a decision on which reviews should be prioritised for launch.³

² CMA11, paragraph 3.8

³ Remedies not selected for review on this occasion may still be subject to review in line with the CMA's prioritisation principles.

Annexe One

Lloyds TSB Group / Abbey National (2002 – Retail banking)

Remedy: [Undertakings](#) were given by Lloyds TSB Group plc to the Secretary of State for Trade and Industry on 18 January 2002 following the Competition Commission's report: '[Lloyds TSB Group plc and Abbey National plc: A report on the proposed merger](#)'.

Potential change in circumstance identified: Abbey National plc is no longer a distinct entity, being part of Santander.

Home Retail Group / Focus DIY (2008 – DIY stores)

Remedy: [Undertakings in lieu](#) were given by Home Retail Group Ltd to the Office of Fair Trading (OFT) on 8 August 2008 following the OFT's decision: [Completed acquisition by Home Retail Group plc of 27 leasehold properties from Focus \(DIY\) Ltd](#).

Potential change in circumstance identified: Focus DIY was dissolved in 2015. Home Retail Group is now owned by Sainsburys. The divested site is currently occupied by Argos and Asda retail stores.

Subsea 7 S.A (ex Acergy S.A.) / Subsea 7 Inc (2011 – under-sea engineering equipment)

Remedy: [Undertakings in lieu](#) were given by Subsea 7 S.A. and Acergy M.S. Ltd to the OFT on 17 August 2011 following the OFT's decision: [Anticipated acquisition by Acergy SA of Subsea 7 Inc](#).

Potential change in circumstance identified: The CMA believes that the divested asset (a ship) has been decommissioned.

Tetra Laval Group / Part of Carlisle Process Systems from Carlisle Companies Inc (2006)

Remedy: [Undertakings in lieu](#) were given by Tetra Laval Group to the OFT on 20 November 2006 following the OFT's decision: [Anticipated acquisition by Tetra Laval Group of part of Carlisle Process Systems](#).

Potential change in circumstance identified: The continued separation requirements of the undertakings concern the use of the name Wincanton. The original buyer of the divested business, Moody plc, is dissolved.

The Energy Market Investigation (ECOES/DES) Order 2016

Remedy: [The order](#) was made by the CMA on 14 December 2016 following the CMA's Phase 2 report: [Energy Market Investigation](#).

Potential change in circumstance identified: The order may now be obsolete because Ofgem has amended its retail code to specify these requirements directly. Those new requirements appear to supersede the substance of the CMA's order.

The Films (Exhibition Periods) Order 1996

Remedy: The [order](#) was made by the Secretary of State for Trade and Industry on 12 December 1996 following the Monopolies and Mergers Commission's (MMC) report: [Films: A report on the supply of films for exhibition in cinemas in the UK](#).

Potential change in circumstance identified: The order pre-dates digital film projection, when the incentives on film distributors and exhibitors in terms of desires for the length of exhibition periods differed from those now present in the era of digital projection. This remedy therefore may no longer be appropriate. In addition, there have been a range of other changes since 1996 including online viewing and distribution via new media channels. The market structure has also changed, with more distributors now present.

Solway Foods (Boparan Holdings Ltd) / Premier Foods (Brookes and Avana businesses) (2010 – Christmas puddings)

Remedy: [Undertakings in lieu](#) were given by Boparan Holdings Ltd to the OFT on 25 October 2012 following the OFT's decision: [Completed acquisition by Boparan Holdings Limited of R F Brookes Chilled Food and Avana Bakeries](#).

Potential change in circumstance identified: The OFT believed that the merger would give rise to a realistic prospect of a substantial lessening of competition in the supply of Christmas puddings in the UK because of the loss of a strong competitive constraint on Boparan's Matthew Walker business. Boparan was asked to divest either its Avana business or its Matthew Walker business and Boparan divested

Matthew Walker. Matthew Walker is now owned by Bakery Foods Ltd and not by the original buyer (Sargents Bakeries Ltd). Avana is now dissolved.

Johnston Press / Local Press (2006 – Farm Week publication)

Remedy: [Undertakings in lieu](#) were given by Johnston Press plc to the OFT on 6 October 2006 following the OFT's decision: [Completed acquisition by Johnston Press plc of Local Press Ltd](#).

Potential change in circumstance identified: Farm Week publication is no longer a physical magazine, now available online only. At the time of the decision, the CMA considered the market for farming publications in Northern Ireland and its analysis focused on print media, making no reference to online or digital media. The ownership of the publication has also changed since the undertakings were given.

Animal Waste Undertakings (1995)

Remedy: [Undertakings](#) were given by Prosper De Mulder Ltd (now Saria Ltd) and William Forrest and Son (Paisley) Ltd (now Barker and Hird (WF) Ltd) to the MMC on 1 February 1995 following the MMC's report: [Animal Waste: a report on the supply of animal waste in England and Wales and in Scotland](#). The remedy was reviewed by the Competition Commission (CC) in 2007. The CC released a number of requirements and retained the remainder.⁴

Potential change in circumstance identified: There have been changes in the relevant market including through different ways to process animal waste and changes in the structure and size of businesses active in the relevant market.

Postal Franking Machines undertakings (2005)

Remedy: [Undertakings](#) were given by Royal Mail Group plc, Pitney Bowes Ltd and Neopost Ltd to the OFT on 17 June 2005, following the [OFT's review of previous undertakings given to the MMC](#) in 1988 by Pitney Bowes and Roneo Alcatel Ltd following its 1986 report: [Postal Franking Machines: a report on the supply, maintenance and repair of postal franking machines in the United Kingdom](#).

⁴ [Supply of Animal Waste: Decision to Release Undertakings \(nationalarchives.gov.uk\)](#)

Potential change in circumstance identified: We have been made aware that some technological developments since these undertakings were accepted may mean some elements of the undertakings may no longer be appropriate.